

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LISA A. FOX)	
Claimant)	
VS.)	
)	Docket No. 195,542
TOPEKA PLAZA INN)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from an Award entered June 18, 1998 by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument on February 3, 1999 in Topeka, Kansas.

APPEARANCES

Claimant appeared by her attorney, John M. Ostrowski of Topeka, Kansas. Respondent and its insurance company appeared by their attorney, Bret C. Owen of Topeka, Kansas.

RECORD AND STIPULATIONS

The record before the Appeals Board and the parties' stipulations are the same as those identified in the June 18, 1998 Award and the original Agreed Award entered May 29, 1996 by Special Administrative Law Judge William F. Morrissey.

ISSUES

The ALJ denied claimant's post-award application for additional medical treatment. The sole issue for review is whether claimant is entitled to continued chiropractic care in addition to the medical treatment authorized by respondent.

FINDINGS OF FACT

(1) Claimant injured her low back at work on July 17, 1993. Her claim for workers compensation benefits was settled by the entry of an Agreed Award on May 29, 1996 by Special Administrative Law Judge William F. Morrissey. Permanent partial disability compensation was based upon a 10 percent functional impairment rating to the whole body by Dr. P. Brent Koprivica. Future medical benefits were awarded upon application to and approval by the Director.

(2) Claimant suffers from chronic pain. She was receiving authorized treatment from both K. R. Knappenberger, M.D., and Lance E. Malmstrom, D.C., until approximately January of 1997 when respondent informed claimant that chiropractic care would no longer be authorized. A preliminary hearing was held on March 5, 1997 on claimant's request for additional treatment in the form of continued chiropractic care. This request was denied. Thereafter, the parties submitted their evidence and the final award, which is the subject of this appeal, was entered.

(3) Claimant does not allege that Dr. Knappenberger's treatment is unsatisfactory. But claimant does contend that Dr. Knappenberger's treatment is incomplete. Dr. Knappenberger, who is an orthopedic surgeon, supplies claimant's TENS unit and medication, but does not do chiropractic manipulations.

(4) Claimant began treating with Dr. Malmstrom August 21, 1995 and it appears she last saw him as an authorized physician on January 6, 1997. In the last seven months of 1996, after the entry of the May 29, 1996 Agreed Award, Dr. Malmstrom's records show he treated claimant on seven occasions for an average of once a month. Before the Agreed Award was entered claimant was seen by Dr. Malmstrom on 53 occasions over a period of approximately 10 months for an average of about 5 treatments per month. Claimant's testimony indicated that one or two treatments per month would provide her with significant relief from her pain symptoms.

(5) Dr. Malmstrom's diagnosis was mechanical joint and muscle problems about the pelvis, tailbone and lower lumbar spine. Although claimant has reached maximum medical improvement, she continues to have problems. His ongoing treatment would be considered palliative in nature to help her control her symptoms in a more tolerable level. Dr. Malmstrom does not expect any significant improvement in claimant's status however.

(6) Claimant treated for a time with Dr. Deborah T. Mowery. She recommended claimant continue with a series of home exercises and recommended weight loss to help reduce her symptomatology. Dr. Mowery testified that she did not believe chiropractic care was necessary, particularly after the first 6 to 8 months following an injury. Dr. Mowery last examined claimant on November 1, 1994.

(7) P. Brent Koprivica, M.D., initially indicated that chiropractic care was not necessary, but he conceded that manipulation of the coccyx for coccyx pain is a recognized treatment

modality. Furthermore, he agreed that if chiropractic manipulation provided temporary relief for two weeks that would be different than if it were only a few hours. He also admitted that if it was his back that was hurting, he would consider a treatment modality that provided temporary relief to be appropriate.

(8) Claimant has experienced difficulty taking certain pain medications due to stomach upset. She currently is taking Tagamet along with Ibuprofen.

CONCLUSIONS OF LAW

K.S.A. 44-510(a) provides:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

It is undisputed that the chiropractic treatment claimant seeks will not cure her from the effects of her injury. Claimant testified, however, that it relieves her from some of the effects of her injury; specifically, low back and coccyx pain symptoms. This relief is not inconsequential. To paraphrase Dr. Koprivica, who was originally court appointed to provide an independent medical examination, symptom relief that lasts only a matter of a few hours cannot be considered reasonable but if that relief lasts two weeks then it is reasonable.

Claimant testified that she gets relief from between one and three treatments per month. She is asking for authorization to receive two treatments per month. That is essentially one every two weeks. This is consistent with what Dr. Koprivica considered reasonable.

Claimant has an authorized treating physician in Dr. Knappenberger. The reasonableness of the treatment he provides in the form of a TENS unit and medication is not in dispute. But claimant seeks additional palliative treatment in the form of chiropractic manipulation. Based upon the record presented, the Appeals Board considers claimant's request to be reasonable and it is ordered to be provided at the cost of respondent and its insurance carrier.

Finally, the record suggests that some of the treatments claimant has received from Dr. Malmstrom are directed to parts of claimant's body that were not affected by her

work-related injury. This Order only authorizes chiropractic treatment directed to relieve claimant from the effects of the work-related injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bryce D. Benedict dated June 18, 1998, is reversed and claimant's request for chiropractic treatment is granted.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Ostrowski, Topeka, KS
Bret C. Owen, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director